IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8150 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANILBHAI KANUBHAI CHAUDHARI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8150 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS HB PUNANI, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 20/12/2004

ORAL JUDGEMENT

1. Heard ld. Mr. MR Prajapati for the petitioner detenu and ld. AGP Ms. HB Punani for the respondent

State.

2. By this petition under Article 226 read with Articles 21 & 22(5) of the Constitution of India, the petitioner detenu has challenged the legality and validity of the order of detention dated 07.04.2004 passed by the District Magistrate, Surat, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The petitioner detenu has been branded as "boot-legger" as defined under Sec.2(b) of the PASA Act.

3. The grounds for detention supplied to the detenu petitioner indicate for recording subjective satisfaction and passing the order of preventive detention, in reference to the Scheme of Sec.3 R/w 9(1) of the PASA Act, the detaining authority -District Magistrate, Surat, while passing the order of preventive detention, has considered the fact of registration of 2 different offences punishable under the Bombay Prohibition Act.

4. The order of detention is challenged on various grounds mentioned in the petition. However, ld. counsel Mr.Prajapati appearing for the detenu has challenged the legality and validity of the order mainly on two grounds. The first ground pressed into service by ld. counsel Mr. Prajapati is that in reality, the petitioner detenu was involved in connection with the offence registered at Vyara Police Station on 14.03.2004 wherein he was arrested on 25.03.2004, but as he was granted bail on 26.03.2004, he was again apprehended on that very day in another crime registered at Vapi Prohibition Police Station No.204/2004 allegedly committed on 12.03.2004. Considering this totality, the activities of the detenu can not be said tobe prejudicial to the maintenance of public order and ultimately it can be said to be a wrong committed effecting the maintenance of law and order. Considering the facts circumstances, there is much strength in this submission and in view of settled legal position, it can not be said that activities of the detenu are prejudicial to the maintenance of public order. Hence, this shows total non-application of mind and mechanical exercise of powers vitiating the order of detention.

5. The next submission of ld. counsel Mr. Prajapati is that the order is also bad in law on the ground that the same is passed without application of mind and mechanically. In support of this submission,

Mr. Prajapati has pointed out that in the offence at Sr.No.2 in the table mentioned in the grounds of detention conveyed to the detenu, he was taken on police remand and police reproduced him before the ld. JMFC, Pardi on 29.03.2004. Thereafter, he was enlarged on bail on the endorsement by ld. APP on 01.04.2004. The order under challenge is dated 07.04.2004. So, the fact of the petitioner detenu on bail was possible to be mentioned by the sponsoring authority while placing the papers before the detaining authority. It seems that with a view to obtain the order of preventive detention, the papers are prepared in hot haste and were placed before the detaining authority and order is also signed mechanically without verifying the correctness of the facts stated by the sponsoring authority. In the tabular form shown in the grounds of detention, there is no mention of the petitioner detenu being granted bail qua the second offence registered at Vapi Pro.Police Station. On the contrary, ground no.1 in the grounds of detention gives an impression that the petitioner, on the relevant date was in judicial custody . By reading ground no.1, it was possible to infer that there was no reason for the sponsoring authority to place the papers for obtaining prohibitory preventive detention order. In absence of formal statement by any witness supporting the say of the sponsoring authority, it will be difficult for the Court to uphold the order under challenge. So, on both these grounds, it must be held that the subjective satisfaction is recorded mechanically and without application of mind and it vitiates the order of detention and so the same can not sustain in the eyes of law.

6. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 07.04.2004, passed by the District Magistrate, Surat, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[C. K.BUCH, J]

*rawal